

REMARKS

Claims 1-23, 50, and 56-80 have been cancelled and claims 24-55 remain pending and stand rejected. Applicants have amended claims 24, 31-33, 40-41, and 48. Support for the amendments to claims 24, 31-33, and 40-41 may be found throughout the specification, for example, in paragraphs 28 and 31. Support for the amendments to claim 48 may also be found throughout the specification, for example, in paragraphs 26, 31, 34, and paragraph 50 of Example 1.

The present invention is directed to a method of providing material for orthopedic surgery by placing a self-supporting body comprising partially coagulated material in admixture with a porous material having macro-, meso-, microporosity into an osseous void. Essential to this is the coagulation of blood or bone marrow-derived material among the morsels of particles in order to form a cohesive mass useful in orthopedic surgery. The Examiner has applied U.S Patent No. 5,824,084 to Muschler in prior Office Actions. Muschler specifically recites at column 3, lines 1-5, that the bone marrow aspirate is collected "preferably in the presence of an anti-coagulant." Muschler preferably requires an anti-coagulant because the patent teaches collecting the infiltrant after it passes through the material. It is apparently the Examiner's position that while the anticoagulant is taught, it is possible that some coagulation takes place notwithstanding the anticoagulant.


The prior art specifically teaches away from coagulation. There is no basis to conclude that the specific and unmistakable teaching away would give rise to the present invention. There has been no showing of Beta-tricalcium phosphate or a macro-, meso-, or microporous substrate as presently claimed. Proceeding to appeal on these claims under the circumstances would be a tremendous waste of resources and an unnecessary financial burden to the Applicants. It is hoped that another Examiner interview or, perhaps, an internal caucus between the examiner and his SPE, would avoid the need for appeal.

DOCKET NO.: OVIT-0190
Application No.: 10/035,797
Office Action Dated: August 24, 2004

PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116

Applicants respectfully submit that this application is now in condition for allowance. Accordingly, an indication of allowability and an early Notice of Allowance are respectfully requested.

Date: January 27, 2005


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